



AP 1772
EJW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application of: :
KONSTANTINOS POULAKIS ET AL. :
Serial No.: 09/743,710 : Art Unit: 1772
Filed: January 16, 2001 : Examiner: J. J. Rhee
For: **METHOD FOR PRODUCING A
SHAPED FOAM BODY,
ESPECIALLY A FOAM PADDING
ELEMENT FOR A VEHICLE SEAT** : Appeal No. _____

**APPELLANT'S REPLY BRIEF
ON APPEAL UNDER 37 C.F.R. § 1.193(b)**

COMMISSIONER FOR PATENTS
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Sir:

In the response to the August 25, 2004 Examiner's Answer and the appeal to the Board of Patent Appeals and Interferences from the decision dated March 27, 2003 of the Primary Examiner twice rejecting claims 9-19 in connection with the above-identified application, Applicants-Appellants submit the following reply brief in accordance with 37 C.F.R. § 1.193(b).

1. The Incorporation by Reference and the Ferromagnetic Coating Extending Throughout the Entire Length and Width of the Covering is Adequately Supported and Disclosed in the Original Specification

As clearly demonstrated by applicants' main brief, the incorporation by reference of the Stahl publication and the claim 9 description of "a ferromagnetic coating extending throughout the

entire length and width of the foam-inhibiting covering" is adequately supported and described in the application such that no prohibited "new matter" under 35 U.S.C. § 132 exists and such that the description is adequately disclosed to convey to those skilled in the relevant art that the inventors had possession of the claimed invention to the extent required by 35 U.S.C. § 112. The contentions contained in the Examiner's Answer on these issues are untenable.

While the Examiner's Answer repeats the quotes of the portions of the specification cited and quoted by the applicants as supporting the disclosure in issue, no specific comments are made by the Examiner regarding these specification portions. For example, the quotation from page 3, lines 12-15, of the original sheets refers to "admixed" iron particles in the polyurethane coating. Such admixture would indicate to one of ordinary skill in the art that such particles are spread throughout the coating. This coating is indicated as extending entirely across the covering element 15 in that no end of the covering is shown in the drawings and by the disclosure of the coating/adhesive layer being over the adhering elements 5 and the magnetic strips 17. The Examiner does not dispute the extent of the coating, only the extent of the ferromagnetic portion thereof.

Since the ferromagnetic material extends throughout the coating and the coating extends throughout the covering element, the ferromagnetic coating extends throughout the entire length and width of the foam-inhibiting covering disclosed in the original application, as would be recognized by those skilled in the art. Due to this recognition, this description cannot constitute "new matter".

While essential material cannot be incorporated by reference to non-patent publications, the subject matter of those publications can be added by amendment, as accomplished here. Applicants' counsel has stated that the added subject matter consists of the same material

incorporated by reference to the non-patent publication in the incorporating application. Thus, reference to the information contained in this document can be added to this application as provided in MPEP § 608.01(p).

Further, the reference to the Stahl publication is not a mere recitation of that publication as in In re de Seversky, 474 F.2d 671, 177 USPQ 144 (CCPA 1973). Here, the application clearly states that the material in question is that disclosed in the publication. Thus, the citation to In re de Seversky is inapposite.

Thus, all subject matter disclosed and claimed in the pending claims is adequately supported by the originally filed application.

II. Claims 9-19 are Patentably Distinguishable Over the Billarant and Provost Patents

Claims 9 and 19 are each patentably distinguished at least by protecting the adhering elements on the adhesive closing part from the foam by a covering on the closing part surface remote from those adhering elements, and by the magnets being laterally about the mold portion receiving the adhering elements. Claim 9 is further patentably distinguished by the ferromagnetic coating extending throughout the entire covering. These distinguishing features are not disclosed or rendered obvious by the cited and applied patents.

The Examiner contends now that only the Billarant elements 15, not 18 correspond to the adhering elements referred to in the claims. However, elements 18 are not protected from the penetration of foam by the covering element or protective film 20. Protective film 20 only protects hook like projections 18 from contamination by the molding liquid during the molding process as specifically disclosed in column 5, lines 16-18, of the Billarant patent. In contrast, the Billarant

stems 15 with their heads 16 are molded into the foam to provide the connection between the foam body and the fastener strip as disclosed in column 4, lines 52-59.

In interpreting the Billarant film as being remote from anchoring elements 15 and protecting adhering elements 18, such interpretation does not satisfy the claim language. The claims require "protecting adhering elements on the closing part against penetration of foam by arranging a foam inhibiting covering on a side of the adhesive closing part opposite the adhering elements (emphasis added). Thus, the claim clearly requires that the covering be remote from and protect the same adhering elements, not different adhering elements as apparently asserted in the lower portion of page 9 of the Examiner's Answer. The use of the definite article "the" demonstrates that the rejection is based on a misinterpretation of the claims pending in this application, rendering the rejection untenable.

Regarding the magnets, claims 9 and 19 recite "the permanent magnets being placed laterally about a periphery of a portion of the foaming mold receiving the adhering elements of the adhesive closing part . . ." In the paragraphs spanning pages 10 and 11 of the Examiner's Answer, it is contended that "claims 9 and 19 did not state that the magnet is laterally about the periphery of that portion of the mold, but . . ." apparently can refer to any portion of the mold, as best as can be understood. However, these claims clearly recite the periphery of the portion of the mold receiving the adhesive closing part to cooperate with a peripheral border of the covering. Such method is clearly different from the Billarant magnet 52 which is placed directly under the fastening strip and not laterally about the periphery, as claimed. Thus, this argument appears to misinterpret the scope of the claims on appeal and thus, is untenable.

In the penultimate paragraph on page 11, the Examiner's Answer states that the limitation regarding the extent of the ferromagnetic coating is rejected as being obvious. However, no

teaching in any of the cited prior references is cited relative to this feature. Such unsupported contention of obviousness clearly fails to provide the required *prima facie* evidence necessary to support a rejection under 35 U.S.C. § 103. The mere fact that the Examiner also contends that this limitation constitutes "new matter" cannot support a *prima facie* showing of obviousness.

III. Conclusion

In view of the foregoing, and for the reasons set forth in applicants' previously filed Brief on Appeal, Applicants-Appellants submit that (1) the objection under 35 U.S.C. § 132 to the incorporation by reference of the previously mentioned subject matter and to claim 9, (2) the rejection under 35 U.S.C. § 112, first paragraph, of claim 9, and (3) the rejection under 35 U.S.C. § 103 of claims 9-19 are untenable. Thus, Applicants-Appellants request that that this objection and these rejections be reversed.

Respectfully Submitted,



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